

ROLE OF THE STATE OF UTAH IN MINE SAFETY: AN HISTORICAL REFLECTION

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The role of the State of Utah in the area of mine safety has fluctuated dramatically over time and usually in direct response to the level of involvement of the Federal government. During the years as a territory, mine safety is reported by the Utah Labor Commission to have been subject to minimal standards established by Congress. Once Utah achieved Statehood in 1896, the report confirms that the Utah Legislature created the position of State Coal Mine Inspector which remained until the Utah Industrial Commission was established in 1917. Under both the State Coal Mine Inspector and the Industrial Commission standards were adopted to address a variety of issues directed at improving the safety of Utah's coal mines.

As Congress began to adopt legislation to address coal mine safety, the role of the state and Federal governments began to overlap. First, Congress adopted the Federal Coal Mine Safety Act of 1952. This was later modified to cover all underground mines. In 1969 Congress adopted the first comprehensive Federal legislation governing both surface and underground coal mines. The legislation was amended in 1973, and finally in 1977 Congress enacted the Federal Mine Safety and Health Act of 1977. This Act expanded Federal authority over safety through the Mine Safety and Health Administration ("MSHA") and provided to miners certain rights in connection with safety matters. Once this comprehensive program was established at the Federal level, the role of the states became less certain. The Federal program did not do away with state safety programs nor did it give to states the opportunity to establish a state program with "primacy" over mine safety. The pattern of state "primacy" has been adopted in many environmental laws but was not the pattern for mine safety. Instead, it created much uncertainty as to the true role of each level of government and failed to allocate true responsibility over certain critical issues related to safety. Gradually the Utah program began to diminish. In 1987 the Utah Legislature basically repealed much of the substantive state law. In 1988, the Utah Legislature effectively put an end to a Utah administered program and instead relied on the Federal program for mine safety under MSHA.

On August 24, 2007, Governor Huntsman established a Utah Mine Safety Commission (Executive Order 2007-0010) to review the role of the state of Utah in mine safety and rescue efforts. This Executive Order was a direct result of the events that occurred in response to the incident at the Crandall Canyon Mine in August of this year and the Governor's concerns with regard to the safety of Utah's mining industry. Among the charges to the Commission was its responsibility to "Assess the role of state and local government relative to the Federal government and private industry in ensuring mine safety." The fundamental question of this paper is: What were the reasons that lead the state of Utah to relinquish its role in the area of mine safety?

I was one of the persons who testified on February 11, 1988 at the Energy, Natural Resource, and Agriculture House Standing Committee in connection with H.B. 237, "Industrial Commission

Oversight of Mines,” sponsored by Rep. Tom Christensen. This bill effectively eliminated the role of the Industrial Commission over the mine safety. It ultimately passed both Houses of the Utah Legislature and was signed into law by Governor Bangerter.

It is generally recognized that the actions of the Utah Legislature in 1987 and 1988 to reduce the role of the Industrial Commission over mine safety were at least partially in response to the 1984 Wilberg Mine Disaster where 27 lives were lost. The following is my analysis of the issues considered by the state legislature in taking the action in 1988 and in subsequent years to effectively eliminate the jurisdiction of the Industrial Commission over mine safety and ceding those responsibilities to the Federal government under MSHA.

At this point in history it is not possible to fully explain what might have been in the minds of individual legislators as they considered the role of the Industrial Commission over mine safety. However, it is possible to identify some of the specific issues that were of greatest concern and ultimately lead to the action taken by the combined members of the legislature as then confirmed by the governor in signing the bill into law.

The issues that appeared to have the greatest impact in the decision making process are as follows:

- DUPLICATION

It appears that the Wilberg Mine experience clearly indicated to the political decision makers that duplication of jurisdiction was a significant problem. In the minutes of the Energy, Natural Resource, and Agriculture Committee, it is reported that two members of the Industrial Commission testified. Steve Hadley, Chairman of the Industrial Commission said that the bill would “avoid duplication of inspection at the mines.” It is reported that John Flores, then a member of the Industrial Commission, testified that “when there is joint jurisdiction everyone is responsible yet no one is responsible.”

One of the most critical elements of an effective mine safety program, including both mine plan approvals and subsequent enforcement, is the ability to identify those entities that are responsible in the decision making process. Review and approval of mine plans prior to the conduct of mining operations is essential to ensure that mines are operated safely. It is also essential that a single entity be identified as having the responsibility for that review and approval. Similarly, when it comes to enforcement, it is critical that one single chain of command has enforcement responsibility. In the event an incident does happen, it is then critical that one entity have the decision making authority over the site of the incident. This does not exclude input from other agencies or entities, but it does clearly fix the decision making responsibility. It appears that the elimination of the possible duplication of jurisdiction and the identification of a single entity with both responsibility and authority for decision making was one of the essential considerations by the legislature in eliminating the role of the Industrial Commission in mine safety.

- LIABILITY

Another lesson apparently learned from the Wilberg Mine Disaster was the potential for liability in the event of a mine incident. Liability and responsibility seem to go hand in hand. If one has some measure of responsibility, then one also has some risk of liability in the event of accident or injury.

Under Utah law, the mine operator as a potentially responsible party, is required to maintain Worker's Compensation Insurance to protect the interests of the miners. However, when an incident occurs, all persons or entities with "responsibility" are considered for potential "liability." While, as a sovereign, the state does enjoy some insulation against liability, it appears the members of the legislature carefully considered the obligation to the public in the event a state agency was one of those entities making decisions that had the potential to put the lives of miners in jeopardy. It appears the members of the legislature felt it was not appropriate to leave the miners and their families without a "remedy" for the State's actions if in fact it was the state of Utah that made decisions resulting in damage or injury to the miners. Rather than assume both responsibility and liability it appears the members of the legislature were comfortable in shifting both burdens to the Federal government.

- EXPENSE/LIMITED SCOPE

Another consideration by the members of the legislature was the potential expense to the state of Utah to administer an effective mine safety program and the impact the potentially restricted level of expenditure would have on the scope of the involvement of the state of Utah in mine safety issues. This consideration involved not only the expense to hire and train those that would review mine plans as well as those that would conduct enforcement actions, but another significant concern related to the testing, evaluation, and approval of mining products. The Federal Mine Safety and Health Administration maintains a fairly elaborate system for the testing, evaluation and approval of mining products. Since this is a fundamental element of the entire mine safety responsibility, it would appear that the legislature felt that without going to the expense of duplicating those efforts, the mine safety program of the state of Utah would not be as effective as the programs of the Federal government.

Similarly, the Federal program involves not only the education and training of those that will serve as employees of the agency, but it also involves fairly elaborate provisions regarding the education and training of mine workers. All of these elements of a mine safety program involve significant expense. Given the limited number of underground mines which comprise Utah's mining industry and particularly the coal mining industry, (currently only 8 operating mines) it appears the members of the legislature felt that the expense to create a duplicate agency was not justified particularly given the potentially limited scope of the state's involvement.

- HUMAN RESOURCES

In order to carry out an effective mine safety program, the state of Utah would be required to have a sufficient pool of "talent" to be able to both administer the program and carry the program out on the ground. It appears that as members of the legislature evaluated the available talent pool at that time and the ability of the state to compete on a compensation basis for those available within the talent pool, they felt it was simply not within the ability of the state

to provide the human resources that would be necessary to administer a comprehensive and effective state mine safety program.

- UTAH'S COAL MARKET

While Utah continues to maintain a viable coal industry, in recent history it has never ranked within the top 10 states in coal production. At the time of the legislature's decision to remove jurisdiction for mine safety from the Industrial Commission, there were relatively few mines in Utah. Also, a substantial portion of the entire coal production was consumed for electric generation for Utah consumers. The "Annual Review and Forecast of Utah Coal Production and Distribution – 2006" as published by the Utah Geological Survey confirms that these same market conditions remain today. It appears that among the considerations of the members of the legislature in making the decision regarding mine safety issues were the circumstances that there are relatively few mines in Utah, that the coal produced from those mines is consumed in significant part by residents of Utah, and that therefore, the economic burden of a mine safety program would be born exclusively by the citizens of the state rather than more broadly as would be the case under a Federal program.

While the foregoing might not reflect all of the arguments that were presented at the time of the passage of H.B. 273, it is obvious that the arguments presented were persuasive since the bill passed the House 68-0.

- SAFETY BENEFITS

A final question that it would appear the members of the legislature would ask is: Is safety benefited with a State program? While the statistics from the 1988 era have not been located, there are certain statistics available for safety in the United States mining industry by individual state for several recent years. The report of the Utah Labor Commission contains some of those statistics and figures compiled by mining companies have also been reviewed. The statistics show that there appears to be no correlation between improved safety records at mines and those states that have state safety programs. In fact, in several past years Utah, without a state administered program has had a better "All incident rate" than both the national average and most of the states with a state program. Furthermore, some states with state administered programs have an "All incident rate" substantially higher than the national average.

CONCLUSIONS

It appears that a comprehensive mine safety program at the state level would be a significant duplication of the Federal program and is neither obviously better for the safety of miners nor economically realistic in today's environment. History teaches us that it might be beneficial for the miners of Utah to have the State play a limited role in mine safety in such areas as Federal program oversight, education, training, and certification. However, it appears that there are areas of mine safety administration that are best left to the Federal program and those would include such things as: accident rescue and investigation; pre-employment training verification (testing) and refresher training; mine operation approvals; inspections and enforcement; and mine equipment certification.